

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**EVANGELINE G. MARTINEZ,**

**Plaintiff,**

**vs.**

**CIV. NO. 1:21-cv-00331-SMV**

**KILOLO KIJAKAZI,  
Acting Commissioner of  
Social Security,**

**Defendant.**

**ORDER**

Upon consideration of the Stipulated Motion for Award of Attorney Fees Under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, the Court hereby awards Plaintiff \$10,500.00 in attorney fees under the EAJA.

**IT IS ORDERED** that the Stipulated Motion for Award of Attorney Fees Under the Equal Access to Justice Act (Dkt. No. 32) is hereby **GRANTED**. Plaintiff is awarded attorney fees in the amount of \$10,500.00 as the prevailing party herein. If Plaintiff's counsel is subsequently awarded any fees pursuant to 42 U.S.C. §406(b), he must refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

**IT IS FURTHER ORDERED** that if, after receiving the Court's EAJA fee order, the Commissioner (1) determines upon effectuation of the Court's EAJA fee order that Plaintiff does not owe a debt that is subject to offset under the Treasury Offset Program, and (2) agrees to waive the requirements of the Anti-Assignment Act, the fees will be made payable to Plaintiff's attorney. However, if there is a debt owned under the Treasury Offset Program, the

Commissioner cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining EAJA fees after offset will be paid by a check made out to Plaintiff but delivered to Plaintiff's attorney.

DATED this 22d day of November 2022.

  
\_\_\_\_\_  
STEPHAN M. VIDMAR  
UNITED STATES MAGISTRATE JUDGE

SUBMITTED AND APPROVED BY:

Electronically submitted 11/18/22  
VICTORIA V. JOHNSON  
Special Assistant United States Attorney

Electronically approved 11/18/22  
KARL E. OSTERHOUT  
Attorney for Plaintiff